No. 135

In the Supreme Court of the United States

October Term, 1948

The United States, petitioner

v.

William V. Griffin [illegible] Hugh W[illegible] Purvis,
Receivers for Georgia & Florida Railroad

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
CLAIMS

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THE UNITED STATES, PETITIONER

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WILLIAM V. GRIFFIN AND HUGH WILLIAM PURVIS, RECEIVERS FOR GEORGIA & FLORIDA RAILROAD

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled case on April 5, 1948.

OPINION BELOW

The opinion of the Court of Claims (R. 36) is reported at 77 F. Supp. 197.

JURISDICTION

The judgment of the Court of Claims was entered on April 5, 1948 (R. 50). The jurisdiction of this Court is invoked under the provisions of Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTIONS PRESENTED

1. Whether the Court of Claims has jurisdiction to increase the rates of compensation fixed by the Interstate Commerce Commission under the Railway Mail Pay Act of July 28, 1916, which provides that the Commission, after notice and hearing, shall "fix and determine * * * the fair and reasonable rates and compensation for the transportation of such mail matter."

2. Whether respondents have failed to exhaust their administrative remedy by bringing suit without requesting the Postmaster General to make a special contract for the transportation of the mails, as authorized by the Act, "where in his judgment the conditions warrant the application of higher rates" than those provided under the Act.

3. In the event there is jurisdiction in the Court of Claims, whether the scope of review permits the substitution of the court's judgment as to what constitutes fair and reasonable rates for that of the Interstate Commerce Commission.

4. Whether fair and reasonable rates and compensation for transporting mail must, as a matter of law, include compensation for the cost to the railroad of operating unusual amounts of unused space in cars carrying mail.[1]

STATUTES INVOLVED

The relevant portions of the Railway Mail Pay Act (Act of July 28, 1916, 39 Stat. 412 *et seq.*, 39

[1] In the event the petition for a writ of certiorari is granted, the Government will also urge that that portion of respond-

U. S. C. 523 *et seq.*) and other pertinent statutory provisions are set forth in the Appendix, pp. 33–38.

STATEMENT

This action was instituted by respondent railroad receivers in the Court of Claims to recover compensation for transportation of the United States mails at rates in excess of those fixed by the Interstate Commerce Commission pursuant to the Railway Mail Pay Act (R. 1, 10–12). The period involved in this action is from April 1, 1931, through February 28, 1938 (R. 12). Since 1929 respondents, as receivers appointed by the United States District Court for the Southern District of Georgia, have operated the insolvent Georgia

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ent's claim for the period before February 2, 1936, is barred by the statute of limitations. Respondents' original petition in the Court of Claims was filed February 2, 1942. Respondents' cause of action, if any, first matured either on May 10, 1933, when its application to the Interstate Commerce Commission for increased compensation was denied, or on October 3, 1933, when its petition for reconsideration was denied. Thereafter the United States District Court for the Southern District of Georgia entered an order setting aside the Commission's order and directing the Commission to take further appropriate action. Pursuant to this decree the Commission held further hearings and entered an order on February 4, 1936, adhering to its former rates. Subsequent proceedings before this Court established that the district court had no jurisdiction. *United States* v. *Griffin*, 303 U. S. 226. The question presented is whether the subsequent action of the Comission taken pursuant to the order of the district court, which was without jurisdiction, tolled the running of the statute of limitations.

& Florida Railroad Company, whose lines of railroad extend over 400 miles (R. 13).

Prior to the enactment of the "Railway Mail Pay Act," railroads, including the Georgia & Florida, transported mail at rates fixed under contract (R. 13). In 1916 Congress enacted, in the Railway Mail Pay Act, a comprehensive scheme of regulation of mail transportation by railroads which included detailed rate-fixing machinery. Under its terms, the Interstate Commerce Commission is "empowered and directed to fix and determine from time to time the fair and reasonable rates" at which carriers are required to transport the mails and a procedure is prescribed whereby rates are to be established only after notice and full hearing (39 U. S. C. 541, 542, 544–554). After six months from the entry of a rate order, either the Postmaster General or a carrier may apply to the Commission for a "reexamination" of the order (39 U. S. C. 553). The Postmaster General has the additional authority to make special contracts with carriers for transportation of mail at higher rates "where in his judgment the conditions warrant" (39 U. S. C. 565). The Act specifies five classes of service of which only two, apartment railway post-office car service and closed pouch service, are involved here (39 U. S. C. 531).

Following an elaborate investigation and after extended hearings, the Commission, on December

23, 1919, in its first general rate order under the Railway Mail Pay Act, adopted the space basis as the method for determining and promulgating rates. *Railway Mail Pay*, 56 I. C. C. 1. On July 10, 1928, the Commission increased the general rates previously fixed. *Railway Mail Pay*, 144 I. C. C. 675.

As of August 1, 1928, the Post Office Department delivered to the Georgia & Florida Railroad statutory authorizations for transporting the mail on regularly scheduled trains of the carrier at the rates prescribed in the Commission's order of July 10, 1928 (R. 21). Respondents accepted these rates without protest until April 1, 1931 when they applied to the Commission for a reexamination of the rates (R. 21). After investigation and hearing, the Commission, on May 10, 1933, denied the application for increased compensation, holding that the established rates were fair and reasonable (*Railway Mail Pay, In the Matter of the Application of Georgia & Florida Railroad for Increased Rates of Pay*, 192 I. C. C. 779; (R. 22–24)). A petition for reconsideration was denied by the Commission (R. 24). There is no showing that respondents ever applied to the Post Office Department for contract rates higher than those prescribed by the Commission (R. 94, 101, 131–135, 139).

In 1934, in a suit instituted in the United States District Court for the Southern District of Georgia under the Urgent Deficiencies Act (28

U. S. C. 41 (28)), a special three-judge court held the Commission's order unlawful and remanded the case to the Commission for further action (R. 25). Thereupon the Commission conducted further hearings, and, on February 4, 1936, again found the rates previously established to be fair and reasonable (*Railway Mail Pay, In the Matter of the Application of Georgia & Florida Railroad for Increased Rates of Pay*, 214 I. C. C. 66; (R. 25)).

Upon a supplemental bill, the same three-judge court again held the Commission's order unlawful (R. 26). The Government appealed directly to this Court and the decree of the three-judge court was reversed on the grounds that the Commission's order was not reviewable under the Urgent Deficiencies Act because it was a "negative order," and that it was not the type of order comprehended in the Urgent Deficiencies Act because there was no wide public interest in the speedy determination of the validity of railway mail pay orders. *United States* v. *Griffin*, 303 U. S. 226. Following this Court's decision on February 28, 1938, respondents continued to carry mail at the rates fixed by the Commission and took no action before the Commission, the Post Office Department, or in the courts until the filing of the petition in this action four years later.

The mail service authorized for respondents consisted of a 15-foot apartment railway post-office car (R. P. O.) and 3-foot closed-pouch space (R. 26–27). The 15-foot R. P. O. apartment service called

for a 15-foot partitioned section of a 60-foot baggage car fitted with racks to enable a postal clerk employed by the Post Office Department to sort and reassemble the mail en-route (R. 26). The 3-foot closed-pouch service did not consist of any physically divided space in the baggage car, but permitted the transportation of from 50 to 56 mail pouches, the number which could be stored in a 3-foot section of the car (R. 27). The pouches were actually deposited any place in the car (R. 27). The number of pouches carried was normally less than 50, but the rate for this class of service was calculated and paid on the basis of the full 3-foot space unit, regardless of the number of pouches actually carried (R. 27).

Respondents claimed that the Commission's rates were not fair and reasonable as to them on the theory that they did not compensate them for the cost of transporting the mails plus a return of 5.75 per cent on the investment in road and equipment allocable to the mail service (R. 10, 21, 30). After respondents applied for reexamination of the mail rates, a test period of 28 days, for the purpose of obtaining space and other data, was selected (R. 21). This information was then analyzed in accordance with a cost allocation formula, referred to as Plan 2, which had been relied on heavily by the Commission in determining costs and rates in the first general mail pay order in 1919 (56 I. C. C. 1) and to a lesser extent in the 1928 (144 I. C. C. 675) and other proceedings. See 214 I. C. C. 66, 69–70. Invest-

ment in road and equipment was allocated in accordance with the cost ratio (R. 22). Respondents' claim to higher rates was based entirely on the results obtained by application of this formula (R. 4, 9–10).

Allocation of cost and investment in accordance with the proposed formula required the mail service to pay the expense and investment return for the operation of a substantial amount of empty space (R. 22). Costs were first apportioned between passenger train service and freight train service (R. 28). The amount thus apportioned to passenger train service was then further apportioned among passenger proper, baggage and express, and mail services in proportion to the space allocated to these services (R. 22, 30). Before the allocation was made, however, all unused space was charged to the services using space in accordance with the formula in Plan 2 (R. 22). In these computations space authorized for mail service was treated as space used although not actually used, whereas baggage and express service were charged only with space actually occupied (R. 22). There was considerable diversity of opinion as to the method of charging unused space to the mail service (R. 31–32). The Commission found that by allocating the data obtained in the study in accordance with Plan 2, mail rates would have to be increased 87.4 per cent to compensate respondents for the computed expense of providing the mail service and a 5.75 per cent return on investment (R. 23).

The Commission on two occasions held that fair and reasonable rates for respondents were not to be ascertained by a mechanical application of the cost formula in Plan 2. 192 I. C. C. 779; 214 I. C. C. 66. At the conclusion of the first hearing the Commission held that the cost study was "not considered to be an accurate ascertainment of the actual cost of the service" but only an approximation to be given appropriate weight considering all the circumstances, and adverted to various other factors which were deemed controlling. 192 I. C. C. 779. The Commission pointed out that "mail with relation to the other services is bearing its fair share of the expenses of operation and is contributing relatively more than the other services for the space furnished," and that it was paid for at the same rates paid other roads for the same kind of service (192 I. C. C. 779, 783; (R. 24)). In this report the Commission also pointed out that although passenger-train service, of which the mail service was a part, contributed only 5.86 per cent of total railway operating revenue, it was charged with 21.33 per cent of total railway operating expense. 192 I. C. C. 779, 782.

After the subsequent hearing, the Commission again adverted to various weaknesses in determining costs by the proposed formula both in general and particularly with respect to respondents' data, pointing out that costs determined in this fashion constituted but one of several factors ordinarily

considered by it in determining fair and reasonable rates. 214 I. C. C. 66. The Commission again emphasized that cost "computed in the manner described is a hypothetical cost and not an actual cost" and pointed out that in other mail pay proceedings consideration had been given to "the amount and character of the unused space reported as operated," "the actual space occupied by mail, as distinguished from authorized space," "comparisons with compensation received from other services in passenger-train cars," and other factors. *Id.* at 69–70.

The Commission then turned to various factors in the instant case which it believed rendered the suggested formula unacceptable as an accurate guide to the ascertainment of costs. It pointed out that included in the unused space allocated to mail service was part of the excess space in a 30-foot R. P. O. apartment which was furnished at various times when a 15-foot apartment was authorized. 214 I. C. C. at 70; R. 25. The elimination of this excess unused space alone, which was furnished solely to serve the convenience of the carrier, might have resulted in a profit from the transportation of the mails even on respondents' theory of cost determination. 214 I. C. C. at 70–72. The total unused space allocated to the several passenger-train services constituted 44 per cent of the total space operated by respondents. 214 I. C. C. at 71. The Commission also found that "another element of doubt, as to the

reliability of the space study as a basis for determining the cost of service, arises from treating the 3-foot units of authorized mail space as the full space used by mail, regardless of the mail load carried." *Id.* at 73. In fact, according to the Commission's statistics, considerably less than half of the amount of space authorized appears to have been used. *Ibid.* In this connection the Commission also mentioned that the space furnished to meet authorizations for 3-foot units is not set aside for exclusive mail use but is merely available space in the same car used to carry baggage and express. *Ibid.* Further casting doubt on the cost analysis, the Commission noted that its computations did not take into account the fact that "expense of transporting mail per authorized car-foot mile, in view of the service rendered by applicant on its trains in connection with it, might reasonably be considered to be somewhat less per car-foot mile than for passenger-train service as a whole." *Id.* at 75–76.

The Commission also compared the revenue respondents received from the mail service with revenue received for other services and found they were receiving per car-foot mile approximately six times as much revenue from mail traffic as from passenger traffic and approximately two and one-half times as much revenue from mail traffic as from express traffic (*id.* at 74). It also computed the average expense per car-foot mile of operating the passenger-

train service and compared this figure with the revenue received for authorized mail space. The average computed expense per car-foot mile for passenger-train service as a whole was .66 cent. 214 I. C. C. at 74. The revenue per car-foot mile of authorized mail service was 1.03 cents, or 56 per cent more than the average computed expense. *Id.* at 74–75. Thus, "revenue per car-foot mile from the authorized space approaches quite closely the hypothetical cost per car-foot mile plus the stated return" for mail service. *Id.* at 75. This computation does not include, of course, any distribution of mail revenue to unused space apportioned to mail. *Ibid.*

The Commission concluded, "giving consideration to all the computations, the extent and cause of the operation of a substantial portion of the unused space, the fact that a theoretical cost and not actual cost is derived from the methods and plans adopted, and the small amount of mail carried in the authorized units of service * * * that the present rates for transportation of the mail by the applicant are fair and reasonable" (214 I. C. C. at 76; (R. 25)).

In the court below the Government introduced evidence to prove that the authorizations to transport mail at the established rates advanced the financial interests of respondents and that these advantages were recognized by the railroad. In September 1937, the Post Office Department initiated a study to determine on what routes mail,

being carried on mixed freight and passenger trains, could be diverted to other mail or highway routes (R. 103, 104, 171). In June 1939, the Division Superintendent recommended discontinuance of the 15-foot apartment service on respondents' line between Douglas and Valdosta, Georgia, and the substitution of closed-pouch service, which would save the Department $4,870.56 per year (R. 106, 177). Respondents strongly protested this proposed discontinuance of their 15-foot apartment service, stating (R. 170):

> The loss of revenue for handling the mails would seriously affect the finances of the railroad and would undoubtedly curtail train service or eliminate passenger train service entirely; in fact I am not sure but that the loss of the mail revenue would result in abandonment of the railroad.

As a result of the protest against eliminating the financial benefit to the railroad, the Department determined not to discontinue the route until the railroad voluntarily curtailed its service (R. 192).

Between 1931 and 1938, every point of significance on respondents' mail routes was also served by another mail carrier, both by intersecting railroad lines connecting such points directly with Atlanta, Savannah, or Jacksonville, which are the three metropolitan centers for the region served by respondents, and by highway routes (R. 72–88). The mail service by other railroads serving the area covered by respondents' route

was available at the rates fixed by the Interstate Commerce Commission in its order of July 10, 1928, and petitioner offered to prove that the entire service furnished by respondents could have been adequately replaced at no increase in cost (R. 35–36, 83, 96–97).

The evidence also established that respondents' receipts from mail traffic constituted net additions to its revenue (R. 35, 113). The closed-pouch service did not require respondents to incur any appreciable or significant added cost, since this was furnished in cars which had to be hauled in any event (R. 35). Likewise, the 15-foot apartment service did not entail any significant added cost, since it required the use of only one-quarter of the baggage car on the Augusta-Valdosta run, and that car could not have been cut out from the train even if no mail traffic had been carried (R. 113, 115–116). Moreover, even on the assumption that the R. P. O. apartment required the operation of an additional car, the revenue received for the R. P. O. apartment car service was four times the additional cost to the railroad for operating the car (R. 129). Elimination of mail authorizations to respondents, therefore, would have resulted in considerable financial loss to the railroad. Moreover, substituted mail service could have been obtained by the Government at no increase in cost (R. 35–36, 83).

The Court of Claims held that the Interstate Commerce Commission had failed to award re-

spondents an amount sufficient to compensate them for their costs and a return of 5.75 percent on investment in road and equipment engaged in mail service by refusing to apply the proposed cost apportionment formula and that in these circumstances, it had jurisdiction to render judgment for an amount sufficient to constitute fair and reasonable compensation under the facts as found by the Commission (R. 44, 48, 50). Relying on the Commission's finding that an increase of 87.4 percent of the rates paid would be necessary to compensate respondents for their costs and an adequate return on investment by a mathematical application of the cost allocation formula in Plan 2, the court below held as a matter of law that application of the formula was mandatory and awarded respondents $186,707.06 as the amount necessary to render the mail rates fair and reasonable (R. 48, 50). In making this award, the court asserted that it was "giving effect to an order of the Interstate Commerce Commission as properly construed and not determining compensation in an original proceeding under the Fifth Amendment" (R. 49).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding in effect that under the Railway Mail Pay Act of 1916 it had, in the circumstances of the present case, jurisdiction to determine fair

and reasonable compensation for transporting the mails.

2. In holding that on the facts as found and stated by the Interstate Commerce Commission, there is an erroneous conclusion of law by the Commission that respondents have been fairly and reasonably compensated for their mail service.

3. In holding that the mail rate fixed by the Interstate Commerce Commission was confiscatory and did not fairly and reasonably compensate respondents.

4. In failing to hold that since the mail traffic bore, in addition to its direct costs, a fair share of the expenses of operation and contributed relatively more than the other services for the space furnished, the mail compensation fixed by the Commission was fair and reasonable.

5. In failing to hold that the statutory requirement that respondents carry all mail tendered is merely one phase of the general obligation imposed on common carriers to transport all traffic whether tendered by the Government or a private person.

6. In failing to hold that respondents actively sought to retain the mail traffic here involved, and that reasonably similar service could be obtained by the use of other railroads and trucks without increasing costs.

7. In entering judgment for respondents.

REASONS FOR GRANTING THE WRIT

This case presents the question whether orders of the Interstate Commerce Commission fixing, after notice and hearing, the rates of compensation at which common carriers by rail shall carry the United States mails are reviewable in the Court of Claims at all, and, if so, the extent to which they are reviewable. This question has not heretofore been presented to this Court and should be resolved at this time because of the importance of settling the reviewability of railway mail pay rate orders. The rates fixed by the Commission are applicable to several hundred common carriers by rail that transport mail under the Railway Mail Pay Act and require the expenditure by the Post Office Department of, in excess of one hundred million dollars each year.

1. In 1938 this Court held, in connection with the same order that is involved in this action, that the Commission's mail rate orders were not reviewable under the Urgent Deficiencies Act. *United States v. Griffin*, 303 U. S. 226.[2] Notwithstanding con-

[2] The dual grounds for that decision were (1) that the order of the Commission was a "negative" order since it merely refused to increase the carrier's compensation fixed under a prior order, and (2) that there was no wide public interest in the speedy determination of the validity of railway mail pay orders which required the special procedures provided by the Urgent Deficiencies Act. Since railway mail pay orders determine the rates at which carriers are required to carry mail and which the Postmaster General is required to pay for its transportation (39 U. S. C. 551, 563), the "negative order" barrier to review under the Urgent

frary intimations in that opinion, an action in the Court of Claims for a money judgment does not appear to provide the appropriate mechanism for review in the complex field of rate regulation which Congress has committed to the recognized expertness of the Interstate Commerce Commission. The procedure provided by the Railway Mail Pay Act for notice and hearings (39 U. S. C. 547, 553, 554), together with the direction to the Commission "to fix and determine" fair and reasonable rates, imports a Congressional intention to place sole responsibility for determining railway mail pay rates on the Commission and not on the courts. See *United States* v. *New York Central*, 279 U. S. 73, 79; cf. *Shields* v. *Utah Idaho R. Co.*, 305 U. S. 177. The limited review, if any, which such a delegation may be deemed to contemplate (see *infra*, pp. 24–26), is

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Deficiencies Act would seem to have been removed by the Court's later decision in *Rochester Telephone Corp. v. United States*, 307 U. S. 125. Although review was denied in the *Griffin* case on the additional ground of insufficient public interest, the Court may wish to reexamine the question of whether railway mail pay orders are sufficiently different in public importance from the host of rate and other orders which are reviewable under the Urgent Deficiencies Act. There is now pending before the Interstate Commerce Commission an application by more than 200 railway common carriers for the reexamination of the rates of pay for transportation of the mails. That proceeding is identical in character with the administrative proceeding involved in the present case. The broad scope of the order which of necessity must emanate from this general proceeding may well invite a reappraisal of the applicability of the special procedures of the Urgent Deficiencies Act.

not consistent with a proceeding in a court which can exercise no revisory power over the Commission and one in which the sole relief available is a money judgment.' Cf. *Shields* case, *supra*. Moreover, the substitution of the Court of Claims' judgment of a fair and reasonable rate for that fixed by the designated administrative agency, clashes with well-established concepts of the role of judicial review in the rate-making process. See, *e. g.*, *New York* v. *United States*, 331 U. S. 284; *Federal Power Comm'n* v. *Hope Gas Co.*, 320 U. S. 591; *Federal Power Comm'n* v. *Natural Gas Pipeline Co.*, 315 U. S. 575. For, although it is "a part of judicial duty to restrain anything which, in the form of a regulation of rates" operates to deprive a carrier of a constitutional right, "the courts are not authorized to revise or change the body of rates imposed by a legislature or a commission." *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 397, 399; *West* v. *C. & P. Tel. Co.*, 295 U. S. 662; *Baltimore & Ohio R. Co.* v. *United States*, 298 U. S. 349; *Central Kentucky Co.* v. *Commission*, 290 U. S. 264.

Whether or not a railroad acts as a common carrier in transporting the mails (cf. *Atchison, T. & S. F. Ry.* v. *United States*, 225 U. S. 640, 649), the obligation to carry the mails for the Government does not differ substantially from the obligation of a common carrier to serve the public. Cf. 39 U. S. C. 543, 56 I. C. C. 1, 46–47. Since rate-making for mail pay purposes involves similar complexities and requires comparable expertness of the same nature as rate-making for other purposes, the administrative delegation by Congress would appear to invoke identical principles of review.

The principal basis for the assumption of jurisdiction by the Court of Claims appears to have been the language of this Court's opinion in *United States* v. *Griffin, supra,* suggesting various possibilities for review in appropriate circumstances.[4] Before the decision in the *Griffin* case, it was the settled rule in the Court of Claims that Congress had designated the Interstate Commerce Commission as the tribunal to fix mail rates and that the Court of Claims had "no jurisdiction * * * to fix the compensation for the carry-

[4] *Fourth.*—The absence in the Railway Mail Pay Act of a provision for judicial review and the denial of jurisdiction under the Urgent Deficiencies Act do not preclude every character of judicial review. If the Commission makes the appropriate finding of reasonable compensation but fails, because of an alleged error of law, to order payment of the full amount which the railroad believes is payable under the finding, the Court of Claims has jurisdiction of an action for the balance, as the claim asserted is one founded upon a law of Congress. *Missouri Pacific R. Co.* v. *United States,* 271 U. S. 603. Compare *United States* v. *New York Central R. Co.,* 279 U. S. 73, affirming 65 Ct. Cl. 115, 124. And since railway mail service is compulsory, the Court of Claims would, under the general provisions of the Tucker Act, have jurisdiction also of an action for additional compensation if an order is confiscatory. *United States* v. *Great Falls Mfg. Co.,* 112 U. S. 645; *North American Transportation & Trading Co.* v. *United States,* 253 U. S. 330, 333; *Jacobs* v. *United States,* 290 U. S. 13, 16. Moreover, as district courts have jurisdiction of every suit at law or in equity 'arising under the postal laws,' 28 U. S. C., § 41 (6), suit would lie under their general jurisdiction if the Commission is alleged to have acted in excess of its authority or otherwise illegally." Compare *Powell* v. *United States,* 300 U. S. 276, 288, 289. * * *" 292 U. S. at 228.

ing of the mails." *New Jersey & New York R. R. Co.* v. *United States*, 80 C. Cls. 243, 248; *Pere Marquette Railway Co.* v. *United States*, 59 C. Cls. 538, 545; cf. *Denver & Rio Grande R. R. Co.* v. *United States*, 50 C. Cls. 382. In the *Griffin* opinion, the Court referred, without disapproval, to two of these decisions. 303 U. S. at 238. We submit that the various possibilities for review suggested in the *Griffin* case do not warrant the abandonment of this rule.

Neither of the grounds advanced for jurisdiction of the Court of Claims in mail pay cases is applicable here. An action which assails the rates fixed by the Commission as not fair and reasonable is obviously not one in which "the Commission makes the appropriate finding of reasonable compensation but fails, because of an alleged error of law, to order payment of the full amount which the railroad believes is payable under the finding." The language used by the court refers to a situation in which the carrier's claim, based upon the rates fixed by the Commission, was not paid because of an error of law. It cannot fairly be construed to authorize an attack on the rates themselves. This interpretation is confirmed by the supporting cases cited in the opinion. Neither *Missouri Pacific Railway Co.* v. *United States*, 271 U. S. 603, nor *United States* v. *New York Central*, 279 U. S. 73, involved attacks on the rates fixed by the Commission. On the contrary,

they assumed the correctness of the rates fixed and merely raised the question of their applicability to particular situations.

Similarly, this is not a case where "the Court of Claims would, under the general provisions of the Tucker Act, have jurisdiction * * * of an action for additional compensation if an order is confiscatory." *United States* v. *Griffin, supra,* at p. 238. The cases cited to the Court's statement (*United States* v. *Great Falls Mfg. Co.*, 112 U. S. 645; *North American Transportation & Trading Co.* v. *United States*, 253 U. S. 330, 333; *Jacobs* v. *United States*, 290 U. S. 13, 16) demonstrate that it had in mind the situation in which an order issued pursuant to the Commission's rate-making power constituted a taking of private property for public use. But here the question of a taking is not involved as the court below specifically held that it was "not determining compensation in an original proceeding under the Fifth Amendment"-but rather that it was "merely giving effect to an order of the Interstate Commerce Commission as properly construed" (R. 49).

The denial of review in the Court of Claims would not foreclose judicial review of railway mail pay orders. It was pointed out by this Court in *United States* v. *Griffin, supra,* at 238, that "as district courts have jurisdiction of every suit at law or in equity 'arising under the postal laws,'

28 U. S. C., § 41 (6), suit would lie under their general jurisdiction if the Commission is alleged to have acted in excess of its authority, or otherwise illegally." Compare *Shields* v. *Utah Idaho R. Co.*, 305 U. S. 177.

2. The court below, in accepting jurisdiction, also failed to follow the well established doctrine that administrative remedies must be exhausted before resort can be had to the courts. *Aircraft & Diesel Equipment Corp.* v. *Hirsch*, 331 U. S. 752; *United States* v. *Ruzicka*, 329 U. S. 287, 290, 292, 294–295; *Macauley* v. *Waterman Steamship Corporation*, 327 U. S. 540; *Myers* v. *Bethlehem Corp.*, 303 U. S. 41, 50–51; *Utley* v. *St. Petersburg*, 292 U. S. 106; *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710, 723–724; *First National Bank* v. *Weld County*, 264 U. S. 450, 454–456; *Yakus* v. *United States*, 321 U. S. 414, 444–447.

The Railway Mail Pay Act, while primarily concerned with the fixing of rates of general application, also provides that "the Postmaster General is authorized to make special contracts with the railroad companies for the transportation of the mails where in his judgment the conditions warrant the application of higher rates" than those specified in the orders of the Commission. 39 U. S. C. 565.

Although respondents made an unsuccessful application to the Interstate Commerce Commission for reexamination as to them of the order fixing

rates (192 I. C. C. 779, 214 I. C. C. 66), there is no showing that application was ever made to the Postmaster General for a special contract for higher rates because of respondents' asserted higher than average mail service costs. The statutory provision for special contracts appears to have been designed for such special circumstances as respondents assert. Under established principles, respondents' failure to give the Postmaster General the opportunity provided by statute to correct alleged inadequate compensation because of special conditions would seem to deprive the courts of jurisdiction of their action.

3. Even if it be assumed that there is jurisdiction in the Court of Claims to review the determination of the Interstate Commerce Commission, the court failed to give appropriate scope to the informed judgment of the expert administrative agency to which Congress delegated the function of prescribing "fair and reasonable" rates for transporting mail. *New York* v. *United States*, 331 U. S. 284; *Gray* v. *Powell*, 314 U. S. 402; *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111. Thus "Even when resort to courts can be had to review a Commission's order, the range of issues open to review is narrow." *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 139–140. "If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result," the judicial inquiry is at an end.

Federal Power Commission v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 586.

With particular reference to the fixing of rates, this Court has stated that "as the ultimate determination whether or not rates are confiscatory ordinarily rests upon a variety of subordinate or primary findings of fact as to particular elements, such findings made by a legislative agency after hearing will not be disturbed save as in particular instances they are plainly shown to be overborne." *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 54.

The complexities involved in determining the proper proportion of the railroads' cost and investment to be allocated to carrying the mails (see *Railway Mail Pay*, 56 I. C. C. 1–120; 144 I. C. C. 675–727), confirms "the wisdom of the narrow scope within which Congress has confined judicial participation in the rate-making process." *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 546. "The determination of transportation costs and their allocation among various types of traffic is not a mere mathematical exercise. Like other problems in cost accounting, it involves the exercise of judgment born of intimate knowledge of the particular activity and the making of adjustments and qualifications too subtle for the uninitiated." *New York* v. *United States*, 331 U. S. 284, 335. The effect to be given a cost study is peculiarly within the province of the Commission and if "the record affords a